

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on April 15, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. Michael Lange (R)

Members Absent: None.

Staff Present: Pam Schindler, Committee Secretary
John MacMaster, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SJR 40, 4/15/2005

Executive Action: HB 805,806-Do Pass As Amended, SJR
40-Do Concur

(Please Note: The House Judiciary Committee met at 8:00 A.M. to take Executive Action on HB 805, HB 806. The committee was given a Joint Resolution later that day, so the House Judiciary Committee met again at 3:00 P.M. to hear SJR 40.)

EXECUTIVE ACTION ON HB 805

(Please Note: REPS. GUTSCHE and SONJU absent from the room.)

Motion: REP. CLARK moved that HB 805 DO PASS.

Discussion:

The committee discussed this bill at length regarding the ramifications if HB 805 passed and was put on the ballot and then voters did not choose to ratify it. REP. CLARK informed the committee, "...if the voters were to deny these, the process would need to start over either way."

{Tape: 1; Side: A; Approx. Time Counter: 0 - 118}

Motion: REP. CLARK moved that HB 805 BE AMENDED by STRIKING ALL OF SUBSECTION 3, PAGE 1 LINE 29 THROUGH PAGE 2, LINE 1.

Discussion:

The committee discussed the amendment as to the repetitive language therein.

Vote: Motion that HB 805 BE AMENDED carried unanimously by voice vote. (REPS. GUTSCHE, LANGE and SONJU voted by proxy vote.)

Motion: REP. STOKER moved that HB 805 DO PASS AS AMENDED.

Motion: REP. STOKER moved that HB 805 BE AMENDED.

EXHIBIT(juh81a01)

Discussion:

REP. STOKER explained the amendment to the committee. The committee discussed the amendment and any possible additional amendments.

The committee continued to discuss the positive aspects of waiting until next session, that there was no hurry, "...especially this late in the session," etc.

{Tape: 1; Side: A; Approx. Time Counter: 118 - 257}

{Tape: 1; Side: A; Approx. Time Counter: 257 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 100}

Vote: Motion that HB 805 BE AMENDED failed 9-9 by roll call vote with REP. BECKER, REP. DRISCOLL, REP. EVERETT, REP. LANGE, REP. MCGILLVRAY, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD voting aye. (REPS. GUTSCHE, LANGE and SONJU voted by proxy vote.)

Vote: Motion that HB 805 DO PASS AS AMENDED carried 14-4 by roll call vote with REP. BECKER, REP. HARRIS, REP. NOONAN, and REP. WINDHAM voting no. (REPS. GUTSCHE, LANGE and SONJU voted by proxy vote.)

{Tape: 1; Side: B; Approx. Time Counter: 100 - 159}

EXECUTIVE ACTION ON HB 806

Motion: REP. WARD moved that HB 806 DO PASS.

Motion: REP. CLARK moved that HB 806 BE AMENDED by INSERTING "REPRESENTATIVE" TO PAGE 1, LINE 28, PAGE 2, LINE 9, PAGE 2, LINE 11 AND STRIKE SECTION 2.

{Tape: 1; Side: B; Approx. Time Counter: 159 - 175; Comments:

This was from amendment 806.01 given at the time of the hearing.}

Vote: Motion that HB 806 BE AMENDED carried unanimously by voice vote. (REPS. GUTSCHE, LANGE and SONJU voted by proxy vote.)

Motion/Vote: REP. CLARK moved that HB 806 DO PASS AS AMENDED. Motion carried 14-4 by voice vote with REP. BECKER, REP. HARRIS, REP. NOONAN, and REP. WINDHAM voting no. (REPS. GUTSCHE, LANGE and SONJU voted by proxy vote.)

(Please Note: The proceeding hearing initiated at 3:00 P.M.)

HEARING ON SJR 40

Sponsor: SEN. TRUDI SCHMIDT, SD 11, GREAT FALLS

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT (D), SD 11, opened the hearing on **SJ 40**, Study delivery of prosecution services.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 25}

Proponents' Testimony:

Mike McGrath, Attorney General, spoke in support of SJR 40 and explained to the committee how the State of Montana pays 50% of the county attorney's salary and the county pays the other 50% of the salary with the county setting the salary. The State pays for 100% of the public defender's salary.

{Tape: 2; Side: A; Approx. Time Counter: 25 - 63}

Gordon Morris, Montana Association of Counties (MACo), rose in support of SJR 40 and said that this bill is long overdue.

{Tape: 2; Side: A; Approx. Time Counter: 63 - 80}

Jim Smith, Montana County Attorneys Association, rose in support of SJR 40 and stated that the present system is archaic and needs to be revised.

EXHIBIT(juh81a02)

{Tape: 2; Side: A; Approx. Time Counter: 80 - 161}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS spoke at length with Mr. McGrath about the competence and the funding of the county attorneys.

REP. HARRIS then spoke with Mr. Morris about the idea that the county attorneys should be State employees as they are prosecuting State laws. **Mr. Morris** agreed with that theory.

REP. CLARK then proceeded to question Mr. McGrath about the State employee theory for county attorneys and the vast differences of the salaries from one county to the next county. **Mr. McGrath** referred to the petroleum counties where there is much more funding available and the county attorney contracts with the county for his/her services.

Mr. McGrath continued to speak about the diversity of each county and where some counties are large, the need for expert attorneys is paramount. The funding is set by County Compensation Boards at the local level of each county.

REP. NOENNIG then spoke with Mr. McGrath about the prosecution bureaus, special prosecutors and how those two entities could be assimilated into one unit. The district attorney and the county attorney concept was another topic discussed. **Mr. McGrath** stated that in the small counties, the attorney would be a State employee, who is elected and would handle civil cases. The smaller county would then contract for the criminal or county attorney cases.

REP. GUTSCHE addressed Mr. McGrath about the degree of expertise and that the level of training for county attorneys varies from county to county. They also spoke of the requirements needed to be a county attorney and the election of county attorneys. **Mr. McGrath** stated that for Class One county attorneys, the person is required to have practiced law for three years.

REP. WINDHAM asked Mr. Morris to explain to the committee about how the salaries are determined. **Mr. Morris** stated that the Salary Compensation Boards determine the salaries and it is "not crystal clear" how that is determined.

They continued their conversation regarding longevity raises. **Rep. Parker** gave his input as to the longevity salary increases within Cascade County's matrix.

REP. KOOPMAN questioned Mr. McGrath about the other states that have a state run county attorney system and the possible loss of autonomy of the local courts. **Mr. McGrath** replied, "That is the heart of the discussion, should there be a District Attorney system...?"

{Tape: 2; Side: A; Approx. Time Counter: 161 - 210}

Closing by Sponsor:

SEN. SCHMIDT closed the hearing on SJR 40.

{Tape: 2; Side: A; Approx. Time Counter: 210 - 226}

(Please Note: REPS. STOKER, LANGE and WILSON and absent from the room.)

EXECUTIVE ACTION ON SJR 40

Motion: REP. HARRIS moved that SJR 40 BE CONCURRED IN.

Motion: REP. HARRIS moved that SJR 40 BE AMENDED with a CONCEPTUAL AMENDMENT FOR PAGE 1, LINES 26-28.

Discussion:

The committee discussed the amendment as to the desire for this resolution to go to an Interim Committee and if SJR 40 is amended, the time line may not allow SJR 40 to move forward.

REP. HARRIS, without objection, WITHDREW AMENDMENT.

Vote: Motion that SJR 40 BE CONCURRED IN carried 16-2 by voice vote with REP. EVERETT and REP. MCGILLVRAY voting no. (REPS. LANGE, STOKER and WILSON voted by proxy vote.) (REP. GUTSCHE to carry.)

{Tape: 2; Side: A; Approx. Time Counter: 226 - 270}

EXECUTIVE ACTION ON SB 402

Motion/Vote: REP. WARD moved to RECONSIDER THE MOTION on SB 402. Motion failed 8-10 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD voting aye. (REPS. LANGE, STOKER and WILSON.)

Motion/Vote: REP. WINDHAM moved that SB402 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 2; Side: A; Approx. Time Counter: 270 - 295}

ADJOURNMENT

Adjournment: 9:00 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh81aad0.PDF](#))